

Article - Estates and Trusts

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§13–708.

(a) (1) The court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person.

(2) (i) The court may appoint a guardian of the person of a disabled person for the limited purpose of making one or more decisions related to the health care of that person.

(ii) The court may appoint a guardian of the person of a disabled person for a limited period of time if it appears probable that the disability will cease within 1 year of the appointment of the guardian.

(b) Subject to subsection (a) of this section, the rights, duties, and powers that the court may order include, but are not limited to:

(1) The same rights, powers, and duties that a parent has with respect to an unemancipated minor child, except that the guardian is not liable solely by reason of the guardianship to third persons for any act of the disabled person;

(2) The right to custody of the disabled person and to establish the disabled person's place of abode within and without the State, provided there is court authorization for any change in the classification of abode, except that, except as provided under § 10–611 of the Health – General Article, no one may be committed to a mental facility without an involuntary commitment proceeding as provided by law;

(3) The duty to provide for care, comfort, and maintenance, including social, recreational, and friendship requirements, and, if appropriate, for training and education of the disabled person;

(4) If it is in the best interest of the disabled person, the duty to foster and preserve family relationships including, as appropriate, assisting to arrange visitation and communication by telephone calls, personal mail, and electronic communications;

(5) The duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the disabled person, and, if other property requires protection, the power to commence protective proceedings;

(6) If a guardian of the estate of the disabled person has not been appointed, the right to commence proceedings to compel performance by any person of the person's duty to support the disabled person, and to apply the estate to the support, care, and education of the disabled person, except that the guardian of the person may not obtain funds from the estate for room and board that the guardian, the guardian's spouse, parent, or child provide without a court order approving the charge, and the duty to exercise care to conserve any excess estate for the needs of the disabled person;

(7) If a guardian of the estate has been appointed, the duty to control the custody and care of the disabled person, to receive reasonable sums for room and board provided to the disabled person, and to account to the guardian of the estate for funds expended, and the right to ask the guardian of the estate to expend the estate in payment of third persons for care and maintenance of the disabled person;

(8) (i) The duty to file an annual or biannual report with the court indicating the present place of residence and health status of the ward, the guardian's plan for preserving and maintaining the future well-being of the ward, and the need for continuance or cessation of the guardianship or for any alteration in the powers of the guardian; and

(ii) On receipt of a report under item (i) of this item:

1. The court shall renew the appointment of the guardian if the court is satisfied that the grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist;

2. If the court believes such grounds may not exist, the court shall hold a hearing, similar to that provided for in § 13-705 of this subtitle, at which the guardian shall be required to prove that such grounds exist;

3. If the court does not make these findings, the court shall order the discontinuance of the guardianship of the person; and

4. If the guardian declines to participate in the hearing, the court may appoint another guardian to replace the guardian pursuant to the priorities in § 13-707(a) of this subtitle; and

(9) The power to give necessary consent or approval for:

(i) Medical or other professional care, counsel, treatment, or service, including admission to a hospital or nursing home or transfer from one medical facility to another;

(ii) Withholding medical or other professional care, counsel, treatment, or service; and

(iii) Withdrawing medical or other professional care, counsel, treatment, or service.

(c) (1) Notwithstanding the powers conferred to a guardian under subsection (b)(8) of this section, and except as provided in paragraph (2) of this subsection, where a medical procedure involves, or would involve, a substantial risk to the life of a disabled person, the court must authorize a guardian's consent or approval for:

(i) The medical procedure;

(ii) Withholding the medical procedure; or

(iii) Withdrawing the medical procedure that involves, or would involve, a substantial risk to the life of the disabled person.

(2) The court may, upon such conditions as the court considers appropriate, authorize a guardian to make a decision regarding medical procedures that involve a substantial risk to life without further court authorization, if:

(i) The disabled person has executed an advance directive in accordance with Title 5, Subtitle 6 of the Health – General Article that authorizes the guardian to consent to the provision, withholding or withdrawal of a medical procedure that involves a substantial risk to life but does not appoint a health care agent; or

(ii) The guardian is:

1. Within a class of individuals specified in § 5–605(a)(2) of the Health – General Article as authorized to make health care decisions for the disabled person; and

2. Determined by the court to be familiar with the personal beliefs, values, and medical situation of the disabled person.

(3) A petition seeking the authorization of a court that a life-sustaining procedure be withheld or withdrawn is subject to the provisions of §§ 13–711 through 13–713 of this subtitle.

(d) (1) Notwithstanding subsection (a) of this section, and in addition to the rights, duties, and powers which the court may order under subsection (b) of this section, the court may order the relief provided under this subsection.

(2) (i) If a guardian of the estate has been appointed, a guardian of the person may ask the guardian of the estate to expend the estate in payment of care and maintenance services provided directly to the disabled person by the guardian of the person at the rate of reimbursement established under this subsection.

(ii) The guardian of the person shall maintain appropriate records to document the care and maintenance services provided directly to the disabled person to receive any payment under this subsection.

(3) To implement the provisions of this subsection, the court may:

(i) Adopt guidelines for the rate of reimbursement for care and maintenance services provided directly by the guardian of the person to a disabled person;

(ii) Establish appropriate procedures for records, inspections, audits, or other requirements to monitor care and maintenance services provided directly by the guardian of the person for which the guardian of the person is reimbursed; and

(iii) Order any act necessary for the best interests of the disabled person.

(e) Notwithstanding subsection (a) of this section, and in addition to the rights, duties, and powers that the court may order under subsection (b) of this section, the court may order the guardian of a person with a disability to serve as a victim's representative to assert the person's interests if:

(1) There is no victim's representative who can adequately assert the person's rights as a victim of a crime or a delinquent act; and

(2) No court has appointed a guardian ad litem to protect the person's interests.

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